

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HERMELANDO MONGE-PIEDRA, et al.,	)	
	)	CASE NO. C14-0457-TSZ-MAT
Petitioners,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	
DEPARTMENT OF HOMELAND	)	
SECURITY, et al.,	)	
	)	
Respondents.	)	
_____	)	

Currently before the Court are *in forma pauperis* (“IFP”) applications for five of the 30 *pro se* plaintiffs in this putative class action. (Dkt. Nos. 8-11 and 25.) For the reasons discussed below, the Court recommends that this action be DISMISSED without prejudice and the pending IFP applications be DENIED as moot.

BACKGROUND

On March 28, 2014, Wayne Rudder, a non-attorney, submitted to the Court for filing a proposed “Class Action Civil Rights Complaint” on behalf of 30 *pro se* plaintiffs, all of whom are aliens detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Northwest Detention Center in Tacoma. (Dkt. Nos. 2-1 and 2-3.) The IFP applications Mr. Rudder

01 submitted with the proposed complaint were incomplete (Dkt. No. 2), and on March 31, 2014,  
02 the Court mailed IFP deficiency letters directly to the plaintiffs, not to Mr. Rudder (Dkt. No. 4).  
03 To date, one plaintiff has paid the \$5 filing fee required for habeas corpus petitions (Dkt. No. 5),  
04 five plaintiffs have submitted corrected IFP applications (Dkt. Nos. 8-11, 25), and 15 of the IFP  
05 deficiency letters have been returned to the Court as undeliverable (Dkt. Nos. 6-7, 12-24).

06       The proposed complaint seeks to challenge the statutory and regulatory scheme  
07 governing removal of aliens from the United States. Specifically, plaintiffs allege: (1) they  
08 were expelled from the United States through the use of voluntary departure procedures other  
09 than those specified in 8 C.F.R. § 240.25, in violation of the Administrative Procedures Act; (2)  
10 they agreed to voluntary departure without a knowing and voluntary waiver of rights in  
11 violation of the Immigration and Nationality Act and procedural due process; (3) their summary  
12 and unauthorized expulsion from the United States, without due process guarantees being met,  
13 violated due process; (4) the reinstatement procedures violate due process because they do not  
14 allow the detainees to challenge the original removal order when that order was illegally  
15 obtained; (5) the Executive Office of Immigration Review and ICE have implemented  
16 procedures at the Northwest Detention Center that prevent the detainees from obtaining counsel  
17 in violation of due process; (6) the “Order of Reinstatement” does not inform detainees that  
18 they are able to appeal to the Ninth Circuit, thereby violating due process; and (7) the  
19 government’s failure to obtain a copy of an original order of removal prior to reinstating that  
20 order violates due process.

21       Plaintiffs seek to pursue these claims on behalf of a class defined as:  
22

01 All persons who have been the subject of voluntary departures gained through  
 02 intimidation, coercion, force, and illegal behavior by the Defendants and those  
 03 who are subjected to the reinstatement process because of the abuses by the  
 04 Defendants, and those who have been removed through the reinstatement  
 process because of the abuses of the Defendants and all those who will be  
 subjected to the reinstatement process after voluntary departure in the future.

05 (Dkt. No. 2-1 at 29.) Plaintiffs ask the Court to certify this matter as a class action and appoint  
 06 counsel, stay their removal pending resolution of their claims, declare defendants' actions  
 07 unconstitutional, and grant an injunction preventing future unconstitutional acts. (*Id.* at 32,  
 08 36-37.)

#### 09 DISCUSSION

10 When a party applies for IFP status, the Court screens the proposed complaint and must  
 11 dismiss the action if it is frivolous, malicious, or fails to state a claim upon which relief may be  
 12 granted. 28 U.S.C. § 1915(e)(2)(B). A complaint "is frivolous where it lacks an arguable  
 13 basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

14 Here, plaintiffs' action should be dismissed because there is no arguable basis in the law  
 15 for them to pursue a class action as non-attorneys who are proceeding *pro se*. While a party  
 16 may plead and conduct his own case personally, that privilege is personal to him. The Ninth  
 17 Circuit has made clear that a *pro se* litigant has no authority to appear as an attorney for others.  
 18 *See Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (privilege to represent  
 19 oneself *pro se* provided by 28 U.S.C. § 1654 is personal to litigant and does not extend to other  
 20 parties); *Johns v. Cnty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (non-attorney may  
 21 appear *pro se* on own behalf, but has no authority to appear as an attorney for others than  
 22 himself); *McShane v. United States*, 366 F.2d 286, 288 (9th Cir. 1966) (non-lawyer does not

01 have authority to appear as attorney for other persons in putative class action).

02 Furthermore, although plaintiffs request that the Court appoint counsel (*see* Dkt. No.  
03 2-1 at 36-37), they have not made the requisite showing. There is no right to counsel in cases  
04 bringing civil rights or habeas claims, and the Court may only request counsel in exceptional  
05 circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v.*  
06 *Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980);  
07 28 U.S.C. § 1915(e)(1). A finding of exceptional circumstances requires an evaluation of both  
08 the likelihood of success on the merits and the ability of the party to articulate his claims *pro se*  
09 in light of the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331. Here,  
10 plaintiffs have not shown that this case involves exceptional circumstances which warrant  
11 appoint of counsel at the present time.

12 The Court also notes that plaintiffs' proposed complaint is deficient because it is  
13 unsigned. Every submission to the Court must be signed by each *pro se* party. *See* Fed. R.  
14 Civ. P. 11(a).

#### 15 CONCLUSION

16 For the foregoing reasons, the Court recommends that this action be DISMISSED  
17 without prejudice and the pending IFP applications be DENIED as moot. (Dkt. Nos. 8-11, 25.)  
18 A proposed order accompanies this Report and Recommendation.

19 DATED this 22nd day of April, 2014.

20 

21 Mary Alice Theiler  
22 Chief United States Magistrate Judge